Testimony of

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Protecting Clean American Energy Production and Jobs by Stopping EPA's Overreach

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Chairman Johnson, Ranking Member Tonko and Members of the Subcommittee, thank you for holding this important hearing and for allowing me the privilege of expressing my views from the perspective of a small independent operating company.

My name is Mike Oestmann. I'm President & CEO of Tall City Exploration, based in Midland Texas. We live and work in the heart of the Permian Basin, which is the largest crude oil producing region and the second largest natural gas producing region in the United States.

I grew up in Midland, then left for a few years to study at Rice University where I graduated in 1982 with a degree in geology. I began my career with Exxon as a geophysicist and am coming up on 42 years in the industry. I've worked in various capacities including building oil and gas companies and finding and developing new oil and gas reserves.

For the past 12 years, I have been running Tall City Exploration, a small oil and gas company. . We grew from three employees and no production in early 2012 to 35 employees producing 25,000 barrels of oil equivalent in 2023.

By that time, Tall City managed 21,500 acres in Reeves County, Texas. We operated over 90 wells, drilling 64 of them ourselves, which represents an investment into the local economy of over $650,000,000.

Each well Tall City drilled required an investment of approximately $10,000,000 per well and typically required the employment of over 100 vendor companies with a median invoice amount of $12,000. This orchestration of vendors required to drill and complete a single well speaks to the hundreds of small businesses that drive our economy and provide jobs for thousands of families. One such example among Tall City's vendors is Garcia Well Service, owned by Martin Garcia out of Wink Texas.

Martin is the son of an immigrant mother, formed his company in 1997 with one pulling unit (which is a specialized oil rig set up for inserting pipe tubing in and out of wells), himself and one employee. After decades of hard work, he now runs 13 units and employs 50 people. His earnings from work in the oil and gas industry allowed him to pay for three children to attend college and allowed his mother to see her three grandchildren become first generation college graduates.

There are thousands of companies and stories just like Martin's. They depend on operators like Tall City to generate work opportunities for them. These are the companies, along with their

employees and their families, who are impacted first and hardest when outside forces, like over-regulation, force a decrease in activity.

At its peak, Tall City's production exceeded 25,000 barrels of oil equivalent per day, generating millions in new value, severance and ad valorum tax revenue for state and local entities (over 75% of Pecos Independent School District's revenue in 2019 was attributable to oil and gas activity in Reeves County), millions in royalty income, and millions in federal income tax. Our production, and hundreds of companies like ours, contributed to the current U.S. production record of 13.3 million barrels of oil equivalent per day, which is providing the oil and gas that fuels our nation and the world, while insulating us from the price spikes to which we would normally be subject given the current geopolitical uncertainties we face today.

Tall City employed 35 people full-time. As is typical in the oil and gas industry, we offered high paying jobs and included company paid health, dental and vision insurance, paid vacation and sick time, a matching 401k program and offered a 2:1 match on employee charitable contributions. Additionally, 70% of our employees were given equity in the company.

In the fourth quarter of 2023, Tall City sold its assets. We are currently in the final stages of a transition service agreement and are now contemplating strategies for Tall City's next steps.

As part of that process, I am asking myself several questions, not the least of which is what will be the regulatory burden that I will face IF we decide to be operators again.

I'm certain we can all agree one thing up front, addressing air emissions in ways that make the air clean and safe for us all to breathe is the right thing to do. I have spent most of my career in Midland, raised our children there, and plan to continue to live there, enjoying the good weather, and the clean air and water. As almost all operators do, Tall City prided itself on producing oil and gas cleanly, safely and on insuring that we complied with the wide range of laws and regulations currently in place.

In Tall City, we hired two full time employees dedicated to regulatory compliance. When Tall City purchased its assets, the Greenhouse Gas (GHG) intensity measured shortly after acquisition was 59.2. In 2022, after significantly increasing production, we reduced that intensity by 66% to 20.1. We did this by significantly reducing flaring, spending an estimated additional $400k on each new facility, installing Vapor Recovery Units, converting to air actuated pneumatics, moving away from trucking and toward pipelines, took on additional risk by building gathering facilities before wells were tested, and proactively conducted leak detection and repair (LDAR) surveys to identify and then repair any leaks.

So, I understand the need for addressing environmental protection while achieving economic success in oil and gas production, but there is a right way and a wrong way to approach the issue. Intelligently leveraging company and government resources in ways that make sense and actually create beneficial results are supported by all of us.

Which brings me to why I am here today and I believe the important focus of today's hearing: putting a spotlight on the seeming regulatory overreach of the Environmental Protection Agency

("EPA") as it relates to methane regulation and the likely adverse impact on small to medium producers, with little or no apparent measurable environmental benefit.

EPA's Methane Morass

I am active in the Permian Basin Petroleum Association and the issue of methane emission regulation is the topic of much conversation among members of the organization and almost all small operators.

There are three major actions by the EPA coming down the pike that have me and others concerned about the combined impact on small producers: i) the Greenhouse Gas Reporting Program regulation (often referred to as the Subpart W proposed rule); ii) the just-finalized Methane Rule that I refer to as the testing and inspection rule, but short hand referred to as the "OOOOb and OOOOc" rule and guidance; and iii) the Inflation Reduction Act's Methane Emission Reduction Program (MERP) charge and its intended tax on methane production measured by CO_2 emitted. So yes, there is a methane tax that is not based on methane, but on CO_2.

The fundamental and overarching concern with this regulatory bundle is this: a much larger number of small and mid-size operators will be subject to taxes under the MERP than Congress intended. The IRA, as originally passed, was targeted towards those operations emitting 25,000 metric ton or more of CO_2. A typical producing well emits much, much smaller quantities but the operator of such wells will now likely be required to pay the tax under the proposed rules. This new reality is a result of not just one but the combination of changes to two separate rulemakings,

being that for the Subpart W and that for OOOOb and OOOOc. The ultimate result will be a negative impact on investment in the industry and hence, reduction of our country's ability to produce the fuel that powers the American way of life and provides energy to our allies around the world.

This concern, along with several significant separate concerns with both rules individually, warrants your attention. I will first discuss the Subpart W proposed rule, then move to a discussion of the concerns with the now final OOOOb and OOOOc, which I think of as a comprehensive testing and inspection rule.

As an important aside, it should be noted at the outset that the rules for the IRA tax are due out in the next few weeks. By law, I am supposed to be collecting information this year –2024– that will be the basis for the tax collection in 2025, without knowing what exact information I'm to be collecting because the proposed "rules of the road" have yet to be issued.

Turning now to the next methane rule expected to be released by EPA.

Subpart W

On August 1, 2023, EPA issued a proposed rule that would revise portions of its Green House Gas Reporting Program (GHGRP), which includes current voluntary reporting of GHG data and other relevant information from large GHG emission sources, fuel and industrial gas suppliers, and CO_2 injection sites in the United States.

Specifically, the rule would, among other activities, modify the Subpart W reporting section of the program (Petroleum and Natural Gas Systems) to address what the agency believes are potential gaps in reporting of emissions data for specific sectors and which establishes confidentiality determinations for new or substantially revised data elements.

As mentioned above, and described in greater detail below, it appears the proposed rule will *dramatically increase* the scope and breadth of activities along with the number and size of oil and gas operations that will be subjected to methane emissions reporting requirements (and the fee that will have to be paid). Such an increase in scope would be well beyond any increase proposed, stated, or intended by Congress and is a result of the manipulation of the rule making process by EPA. Using the rulemaking process in this manner appears inconsistent with the IRA.

Specifically, the principal author of the methane fee legislation, Chairman of the Senate Energy and Natural Resources Committee, Sen. Joe Manchin (D-WV), has made clear his intention is that only those operations that were subject to Subpart W on the date of enactment are to be subject to the charge. In his June 6, 2023, letter to the EPA regarding concerns over implementation of the charge he wrote:

> *The statute clearly intends to exempt marginal wells and smaller producers from the fee. EPA must make it clearly understood that those entities not subject to the current Subpart W Greenhouse Gas Reporting Program are not subject to EPA fees under MERP.* Emphasis added. See Exhibit A.

In addition, there are several other major elements of the rule of concern to me as I evaluate how to proceed in developing exploration activities and determining the direction of my company.

For example, consider the following:

One Size Does Not Fit All: The proposed rule appears to treat key equipment used in upstream, midstream, and downstream sectors the same despite the fact that they are used very differently within each sector of the oil and gas industry. While administratively efficient, the one-size-fits-all approach does not result in gathering empirical data because it ignores the differences in the purpose and operation of equipment used in multiple sectors. For example, flares often operate at low pressures when used in upstream operations, whereas flares are operated at high pressures for downstream uses. This difference in pressure results in different mechanical needs and application of flare equipment, and likely different emissions.

Despite these different operations, the monitoring requirements in the Proposed Rule make no distinction between flares used in the upstream and downstream sectors.

Furthermore, there are distinct geographic differences that mandate the upstream, midstream, and downstream sectors be treated differently. Upstream and midstream assets are spread across large areas and are typically unmanned, whereas downstream assets are located in concentrated areas and are manned.

Empirical Data: The proposed rule states it is the intent that data shall be collected so as "to ensure that reporting is based on empirical data, accurately reflects total methane emissions and

waste emissions from applicable facilities, and allows owners and operators of applicable facilities to submit empirical emissions data that appropriately demonstrate the extent to which a charge is owed." Yet, the proposed rule requires operators to rely on generic emission assumptions and factors that inflate emissions reporting, in some instances up to three times the emission amounts as were determined, without any changes to operations or production volumes, before the changes to the rule were implemented. In other words, these operations, which would not have been "subject to the current Subpart W Greenhouse Gas Reporting Program", as was the stated intent of Chairman Manchin, will now be subject to that program under the EPA's proposed changes in assumptions and factors.

Large Release Events: The draft rule includes language that states "large GHG emission releases may also occur from equipment for which there is a calculation methodology and reporting requirement in Subpart W but for which the existing calculation methodologies in Subpart W would significantly underestimate the magnitude of the emissions." To address this, EPA is proposing to require the reporting of large emission events by revising the calculation methodology to *increase* the emission factor for this equipment, and increasing the likelihood the operations will be subject to the tax through a mechanism the law did not envision. This would not result in the empirical data upon which the EPA should rely and upon which a waste emission fee should be assessed.

Inspecting Buried Pipelines: The proposed rule is seeking to quantify techniques that would be best suited for measuring emissions from pipeline leaks and whether these techniques require digging down to the pipeline in order to quantify emissions and also verify pipeline characteristics. Digging down to buried pipelines to quantify emissions and verify pipeline characteristics goes far

beyond the scope of "reporting" requirements. Such onerous and costly requirements are not justified, especially when such information can be acquired through data analysis, sensors, and leak surveys.

Incorporating Other Rules: Significant portions of the proposed rule are contingent on the now-final OOOOb and OOOOc rules that will require every operation, no matter how small, to test and inspect its equipment for methane emissions. Specifically, EPA states that the final Subpart W amendments "would reference the final version of the method(s) in OOOOb and OOOOc." This means that if the Subpart W rule becomes final as presented, a much broader scope of activities and types of equipment – and types of operators – will be subject to the IRA methane tax, *thus ignoring Congress' intent (see Manchin quote above).*

Turning now to the concerns regarding the just finalized OOOOb and OOOOc.

The Testing and Inspection Final Rule (OOOOb and OOOOc)

On Saturday, December 2, 2023, the EPA announced – at the United Nations Sponsored Conference of the Parties (COP) in Dubai – a regulatory rulemaking package intended to reduce and, to the maximum extent possible, eliminate emissions from oil and natural gas operations and delivery systems in the U.S. Specifically, the EPA released a pre-publication version of the final *Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review*. This is commonly referred to by many as OOOOb and OOOOc.

However, as of January 8th, the rules package had yet to be formally published in the Federal Register, leaving an incomplete picture for the public of the full regulatory impact of the package. This is because several supporting documents related to the rule have yet to be released.

The methane rule is comprised of four separate elements proposed under Sections 111(b) and 111(d) of the Clean Air Act (CAA). Those statutory provisions are the basis for EPA's authority to regulate emissions of volatile organic compounds ("VOC's") and methane from oil and natural gas facilities under 40 C.F.R. Part 60 Subparts OOOO and OOOOa.

The key components of the rule include:

- First, EPA will regulate oil and natural gas facilities constructed, modified, or reconstructed after December 6, 2022, under a new Subpart OOOOb. The requirements in OOOOb will apply to affected facilities 60 days after the rule is published in the Federal Register.

- Second, under a new Subpart OOOOc, EPA finalized emissions guidelines that are intended to inform states in the development, submittal, and implementation of state plans to establish standards of performance for greenhouse gases (in the form of limitations on methane) from sources existing on or before **December 6, 2022**.

States and tribes are required to submit plans to EPA for review within 24 months of the publication of the final rule in the *Federal Register*, with a compliance deadline for existing sources that is no later than 36 months after the deadline to submit the plan to EPA.

- Third, the Final Rule amends OOOOa in response to Congress' June 2021 revocation of regulatory amendments made by EPA under the Trump administration.

- Fourth, the final rule also includes an "Appendix K," a protocol for determining leaks using Optical Gas Imaging (OGI) that EPA now requires at natural gas processing plants regulated by OOOOb or OOOOc.

This final rule comes more than two years after EPA published its initial proposal on November 15, 2021 – which included only explanatory, not actual regulatory, text and a "supplemental" proposal on December 6, 2022. According to EPA, the agency received over one million comments on the proposals.

While I have not fully digested the nearly **1,700 page rule**, my initial sense and understanding is that the rule is setting up another looming regulatory morass of complex mandates and requirements regarding methane emissions from every operator no matter the size, type of operation, or location of operation – with little or no measurable benefit to the environment. If this is indeed the case, it will bring costly burdens throughout the energy production and delivery system in such a way as to guarantee job loss, increase prices to consumers, expand dependence

on foreign oil, put upward pressure on inflation, decrease reliability for power delivery in this country, all for an undetermined and likely negligible benefit to the environment.

Some particularly concerning elements of the rule to call to your attention:

Expanding Reach of the IRA Methane Tax

The big one: the regulatory tie between the Greenhouse Gas Reporting Program (GHGRP) Subpart W proposed rule, the proposed rule for OOOOb and OOOOc, and the IRA methane tax mentioned previously appears to have been "doubled down" on here so the tax to impact a much wider swath of operators than the law intended. Here is a direct quote from the rule:

> ***The EPA also proposed revisions that would align GHGRP Subpart W with other EPA programs and regulations, including proposing revisions to certain requirements in GHGRP Subpart W relative to the requirements proposed for NSPS OOOOb and the presumptive standards proposed in EG OOOOc*** such that, as applicable, facilities would use a consistent method to demonstrate compliance with multiple EPA programs once their emission sources are required to comply with either the final NSPS OOOOb or an approved state plan or applicable Federal plan in 40 CFR part 62 -- OOOOc.

CAA Section 136(c) directs the Administrator of the EPA to "impose and collect a charge on methane emissions that exceed an applicable waste emissions threshold under subsection (f) from

an owner or operator of an applicable facility that reports more than 25,000 metric tons of carbon dioxide equivalent (CO_2 Eq.) of GHG emitted per year pursuant to Subpart W regardless of the reporting threshold under that subpart." See page 158 of the Standards of Performance for New, Constructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review.

Super Emitter Program

Fortunately, it seems EPA has revised the Super Emitter Response Program from the December 2022, proposed rule, so that it will now be *the agency, not third parties* – as originally proposed – that will notify owners and operators of super emitter events.

Therefore, certified third parties will:

- Monitor well sites, centralized production facilities, and compressor stations regulated by OOOO, OOOOa, OOOOb, or OOOOc using specific remote detection technologies for "super-emitter emission events," which are defined as emission events resulting in 100 kilograms (220.5 pounds) per hour or more of methane.

- Be required to submit notification of super emitter events to EPA's Super Emitter Program web-based portal within 15 calendar days of the observation. Upon receipt of a notification by a third party by the agency, owners and operators of these facilities would be required

to initiate an investigation within five days and report the results of that investigation to EPA within 15 days.

Under the rule, EPA will:

- Publish online the information that EPA receives through the Super Emitter Response Program, which will include an identification of the operator responsible for the super emitter event after giving the operator the opportunity to respond to EPA regarding the event.

- Only accept data submitted by EPA-certified third parties and collected using EPA-approved technologies. Upon receiving data submitted by a certified third party, the EPA will review the data for completeness and accuracy; the EPA will post data and notify the identified owner or operator only after it has reviewed and deemed the information to be complete and accurate.

- Certify (and de-certify) the third parties who will be able to submit notifications under this program, as well as notify owners and operators of such information to determine when to post information and responses publicly.

- Establish criteria that a third party must meet in order to be certified to submit data on super-emitter events to the EPA. These criteria ensure that the data submitted to the EPA are collected by a qualified third party with access to an EPA-approved technology and the

technical expertise and capability to use such technology to detect and collect data on super-emitter events.

Fugitive Emissions Monitoring Required at All Well Sites

- Currently, low-production well sites are exempt from fugitive emissions (e.g., leaks) monitoring requirements. The final rule, however, requires fugitive emissions **monitoring at all well sites – no matter how small the operations or the costs to do so --** though the frequency and level of monitoring varies by site, based on its configuration and the presence, if any, of production equipment.

- Single wellhead-only and small well sites must conduct quarterly audio, visual and olfactory (AVO) inspections, while multi-wellhead only well sites must do semiannual Optical Gas Imaging (OGI) inspections in addition to quarterly AVO inspections.

- Well sites with major production and processing equipment must conduct AVO inspections every other month and quarterly OGI inspections. Compressor stations are required to conduct monthly AVO inspections and quarterly OGI inspections.

First-time Requirements for Oil Wells with Associated Gas

- For the first time, EPA will require that associated gas -- natural gas produced by oil wells -- from new, reconstructed, or modified oil wells be routed directly to a delivery line. In

situations where gas-producing oil wells do not have access to a line, associated gas would need to be: used on-site as a fuel source; used for another purpose that a purchased fuel or raw material would service; or be routed to a flare or other control device achieving 95 percent reduction of methane and VOC emissions.

- The final rule separates new associated gas wells into multiple groups based on when construction is commenced to establish a two-year "phase-in" period for the application of the final standards. EPA requires that these same standards apply to existing oil wells with associated gas, thus leading inevitably to a curtailment of production due to costs – with no measurable environmental improvement – likely resulting in uneconomic, or close to uneconomic wells that won't continue to be produced.

Well Closure Plans

- The final rule includes a new suite of well closure requirements. Under these requirements, owners and operators of well sites are required to submit a closure plan to EPA within 30 days of the cessation of production and a notification to EPA 60 days before well closure activities begin.

- The contents of the well closure plan would need to include the steps necessary to permanently plug all wells, a description of financial requirements and assurance to complete closure, and the schedule for completing closure. Well surveys using OGI are required at the well site following well closure activities.

- The rule's approach to plugging reflects a lack of understanding of current state requirements. In the Permian Basin, Texas and New Mexico already require plugging plans, financial assurances and related requirements.

Other Items of Note in The Rule

- The required use of zero-emission pneumatic controllers and pneumatic pumps (most now are natural gas operated).

- A "no identifiable emissions" standard for certain operating systems.

- Use of best management practices aimed to minimize or eliminate VOC or methane emissions during well liquids unloading.

- Extensive, time consuming never before required reporting and record keep requirements.

Conclusion

So, what is the bottom-line impact of this regulatory mess EPA has made for small operators like me and Tall City?

While I am still trying to figure that out for my operations, as are others for their own operations, one thing I know is this, if these rules are implemented as is, oil and gas development in the United States will be curtailed. If operators shutdown current operations, sell assets, or curtail operations because they are not able to economically produce, domestic oil and gas production will decrease and there will be upward pressure on prices for oil and gas based products, like gasoline.

While oil demand is still strong and will be for decades (the EIA estimates that the U.S. will use more oil and natural gas in 2050 than we do today) it seems clear that a direct result of the implementation of these rules will be to ship jobs, revenue, and a key source of supply to many of our adversaries who, ironically, cause much more environmental harm by their production process than U.S. producers.

Limiting U.S. oil and natural gas production will not benefit the world's environment, instead it will take us back to increased dependency for our nation's energy supply from unregulated and rogue foreign producers.

The United States just achieved a production record of 13.3 million barrels of oil equivalent per day while at the same time significantly reducing emissions. This proves American operators can produce the oil and gas the world desperately needs, we can strengthen our allies, and weaken freedom's enemies, and we can develop these God given resources cleanly and with an environmental sensitivity unparalleled by any other operators in the world

In view of these benefits, I believe that EPA should reconsider both rules, withdraw them, and start

over. In addition, the intention of Congress was well clarified in the IRA, but the EPA has largely missed the mark in implementing that intent.

A final important point of optimism and opportunity: I urge Congress and the EPA to consider incentive based partnership approaches that will more likely lead to real and quantifiable benefits to the environment, preserve American jobs and move the world toward a secure energy future.

Thank you, Mr. Chairman, for holding this hearing and all of you for participating and bringing these important issues to the public's attention.